Excise Officer who tested the liquor had not been appointed an analyst under section 54 of the Excise Enactment.

Held by the Court of Appeal (Terrell, Acting C.J., Whitley and Aitken, JJ.) that section 54 of the Excise Enactment does not apply in cases in which a person experienced in testing liquor for its alcoholic contents is called by the prosecution as a witness.

T. M. S. O. Mahendran for the appellants.

I. W. Blelloch, Deputy Public Prosecutor for the respondents.

The members of the Court of Appeal delivered oral judgments during which

WHITLEY, J. said:—

"It seems to me that if a person is called and gives evidence of testing liquor for its alcoholic content, states the result and says that he is experienced in such testing and is not cross-examined thereon, the Court is entitled to accept his evidence as to the alcoholic content so stated. Section 54 of the Excise Enactment (Cap. 133) does not apply in such cases. It only applies to those cases where it would be inconvenient to call the person who had made an analysis, providing a means whereby his certificate of analysis may be admitted in evidence."

AITKIN, J. added:—

"I hope that this case will put an end to the argument that the evidence of an analyst within the meaning of section 54 (v) of the Enactment, or an analyst's certificate is necessary in such cases."

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J., WHITLEY & AITKEN, JJ.

October 30, 1936.

PUBLIC PROSECUTOR.....Appellant.

v.

CHONG SENG.....Respondent.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 58 of 1936].

The Minor Offences Enactment (Cap. 46) section 14 (e)—Meaning of expression "pedal bicycle seated for one person."

The respondent was charged under section 14 (1) of the Minor Offences Enactment (Cap. 46) with riding a bicycle and carrying another person on the carrier of his bicycle. He was acquitted by the Magistrate on the ground that the carrier of the bicycle was a seat.

The Public Prosecutor appealed and the appeal was referred to the Court of Appeal under section 53 of the Courts Enactment (Cap. 2).

Held, by the Court of Appeal, that the acquittal by the Magistrate was wrong because the expression "pedal bicycle seated for one person" in section 14 (1) of the Minor Offences Enactment means a pedal bicycle designed to carry one person on a seat and the carrier did not convert a one-seater bicycle into a two-seater bicycle.

I. W. Blelloch, Deputy Public Prosecutor, for the appellant.

Respondent absent.

Cur. Ad. Vult.

TERRELL, AG. C.J.—This was a reference by Aitken, J. to the Court of Appeal under the provisions of section 53 of the Courts Enactment.

The accused, respondent on the appeal, was charged under section 14 (1) of the Minor Offences Enactment which makes it an offence for any person

"being the rider of a pedal bicycle seated for one person permits another person to be carried on such bicycle on any public road."

It was proved that at about 7 p.m. on the 5th August, 1936, the accused was riding a bicycle and carrying another person on the carrier of his bicycle.

The learned Magistrate acquitted the accused on the ground that the 'carrier" of the bicycle was a seat, and that accordingly a bicycle with a carrier is a 'bicycle seated for more than one person,' and does not come within the purview of the Minor Offences Enactment.

The learned Magistrate gave various grounds for his decision which I may summarise as follows:—

(a) The use of the word 'seat' instead of 'saddle' implies that a bicycle which has only one 'saddle' may nevertheless have two seats.

(b) Passengers are habitually carried on the carrier.

(c) The carrier was not provided with straps, and therefore was not intended for the carriage of goods.

(d) From his own experience the learned Magistrate considered that it was no more dangerous to carry a passenger on a pedal bicycle than on a motor-cycle.

In my opinion none of these reasons are tenable.

As to (a), the learned Deputy Public Prosecutor pointed out that a five-seater motor car might have a substantial luggage carrier upon which two persons could sit, but that that possibility would hardly convert the car from a five-seater into a seven-seater. I agree with a suggestion made by my brother Aitken that a bicycle seated for more than one person must be so designed, and that the mere fact that a 'bicycle seated for one person' has various excrescences upon which people can perch does not convert a one-seater bicycle into a two-seater. There are such things as 'tandem' bicycles, and they are specially designed to seat more than one person.

As to (b), it is true that one can see people seated not only on the carrier, but on the cross-bar and handle bar, but such flagrant breaches of the law can hardly affect the interpretation of the Enactment.

As to (c), it is extremely unusual even for hired-car drivers to have straps for their luggage

carriers. If the rider of a bicycle wishes to tie anything on to his carrier, he will use rope or a piece of string.

As to (d), the argument from the learned Magistrate's own experience seems to me, if not irrelevant, to be unreliable. The stability of a bicycle and a motor-cycle must depend

(i) on the weight of the machine relatively to that of the rider, and

(ii) on the circumstance that the cyclist has to be shifting his balance to propel the cycle, whereas the motorcyclist need not move at all.

From these circumstances I would conclude that a cyclist carrying a passenger has far less control than a motor-cyclist, and that the effect of the Enactment was to put a stop to a practice which, in towns at all events, is fraught with great danger to the cyclist and his passenger, if not to others.

For these reasons, I would allow the appeal and direct a conviction. As the learned Deputy Public Prosecutor only brought the appeal with a view to obtaining an interpretation of the subsection, the only penalty imposed will be a caution.

WHITLEY, J.—I feel no doubt in my mind that this appeal should be allowed. From the photograph of the bicycle it is clear that the carrier is the ordinary metal frame luggage carrier which is normally fitted to most bicycles in this country. From my own experience I know that such a carrier is most uncomfortable to sit on and I can see no reason why it should be regarded as a "seat" any more than the handle bar upon which I have sometimes seen children carried or the bar of the frame between the rider's legs which is also sometimes used for passengers in this country.

"Seated for one person" must in my opinion mean constructed with one seat in contradistinction to a tandem which is constructed with two seats.

It is true that in country districts passengers are frequently carried on these luggage carriers and that hardship would be entailed in many cases if the powers given to the police by this section were too rigidly enforced but the learned Deputy Public Prosecutor explained that what the authorities wish to establish is that they have the power to prohibit such use of bicycles in busy places where the impaired control which undoubtedly results from the carrying of a passenger may be a source of danger not only to those on the bicycle but also to the other traffic on the road. I have no doubt that discrimination will be exercised in the way in which the section is enforced. I consider a caution to be sufficient punishment in this case.

AITKEN, J.—The only question that arises in this appeal is as to the proper construction of section 14 paragraph (l) of the Minor Offences Enactment. What does the expression "pedal bicycle seated for one person" mean? In my opinion it means a pedal bicycle designed to carry only one person on a seat, and in this case it can scarcely be contended that the parcel bracket behind the saddle, on which the second person was sitting, was designed by the manufacturers of the bicycle to carry a human being. Indeed, I imagine that this bracket was originally a separate article entirely, quite likely made by a different firm of manufacturers, and purchased by the accused as an extra. One has only to look at it to see that it was not designed as a seat for a human being. Of course it may be that somewhere or other pedal bicycles are made and designed for the purpose of seating both the rider and a passenger: and if any such bicycles are in existence, or should come into existence in the future, then in my opinion it will be no offence for the rider of such a bicycle in the Federated Malay States to carry a passenger thereon, provided that the latter is seated in accordance with the manufacturer's design. I agree with the order proposed by the learned President.

Appeal allowed.